

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CSR 8077-E
Cox Communications Louisiana, LLC, d/b/a/)	CSR 8239-E
Cox Communications Great Louisiana)	CSR 8240-E
)	CSR 8241-E
Petition for Determination of Effective)	
Competition in 38 Communities in Louisiana)	

MEMORANDUM OPINION AND ORDER

Adopted: September 9, 2010

Released: September 9, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Cox Communications Louisiana, LLC, d/b/a/ Cox Communications Greater Louisiana, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(1, 2, 4) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities, principally because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”), and Dish Network (“Dish”). Petitioner also claims to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioner serves fewer than 30 percent of the households in those franchise areas. Finally, Petitioner claims that it is exempt from cable rate regulation in the Communities listed on Attachment C because of the competing services provided by BellSouth Telecommunications, Inc., d/b/a AT&T Louisiana (“AT&T”), EATEL Video, L.L.C., and Lafayette Utilities System (“LUS”), hereinafter referred to as “Competitors.” The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachments A, B, and C.

¹ See 47 U.S.C. § 543(1)(1)(B).

² 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁶ This test is referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petitions with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in all the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of

⁶ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ 47 C.F.R. § 76.905(b)(2)(i).

⁸ *See* Petition in CSR 8077-E at 4-5.

⁹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹⁰ 47 C.F.R. § 76.905(e)(2). *See also* Petition in CSR 8239-E at 8 & Exh. 4.

¹¹ *See* 47 C.F.R. § 76.905(g). *See also* Petition in CSR 8240-E at 5.

¹² *See* Petition in CSR 8241-E at Exh. 3.

¹³ *See* Petition in CSR 8077-E at 2-5.

¹⁴ *See* Petition in CSR 8077-E at 7; Petition in CSR 8239-E at 9.

subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.¹⁵ Petitioner also obtained subscriber numbers from LUS for certain Communities listed on Attachment A.¹⁶

7. Based upon the aggregate DBS (and, in one Community, LUS) subscriber penetration levels that were calculated using Census 2000 household data and other data,¹⁷ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is referred to as the “low penetration” test.¹⁸ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise areas listed on Attachment B.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment B, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to those Communities.

C. The LEC Test

11. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator;¹⁹ this test is referred to as the “LEC” test.

12. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which

¹⁵ Petition in CSR 8077-E at 7-8.

¹⁶ Petition in CSR 8240-E at 8 n. 29; *id.* at 13.

¹⁷ Petition in CSR 8077-E at 8. In CSRs 8239-E and 8240-E, Petitioner used 2000 Census household numbers for some Communities and, for “high growth” Communities, other numbers. The latter numbers were from Petitioner’s own business records and surveys of “homes passed,” which are apparently thorough and which Petitioner reduced by Census data about vacant housing. Petition in CSR 8239-E at 11-13. We accept the latter numbers for purposes of these proceedings.

¹⁸ 47 U.S.C. § 543(l)(1)(A).

¹⁹ *See* 47 U.S.C. § 543(l)(D).

service may be expanded; and the expected date for completion of construction in the franchise area.²⁰ It is undisputed that each of the Communities on Attachment C is served by both Petitioner and one of the Competitors (or an affiliate of one of the Competitors), all of which are local exchange carriers and are unaffiliated with each other and with the Petitioner. The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming²¹ and is supported in this petition with copies of channel lineups for Competitors.²² Finally, Petitioner has demonstrated that one of the Competitors has commenced providing video programming service within each of the Communities listed on Attachment C, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.²³

13. Additional explanation is necessary about the statutory requirement that one of the LEC Competitors is actually offering MVPD service in each Community in which Petitioner claims to be subject to LEC competition.²⁴ The Petitions contain showings of actual service by one of the Competitors for some of the Attachment C Communities²⁵ and our own research has produced proof that one of the Competitors is offering service in others.²⁶ The Petition in CSR 8239-E lists Baker (LA-0160) as a Community in which Petitioner is subject to LEC effective competition from AT&T. The Petition, however, makes no showing that AT&T has begun offering MVPD service in Baker. Nor has our own research revealed any such showing. We need not rule on Petitioner’s LEC effective competition claim for Baker, however, because Petitioner has shown, as reflected in Attachment A, that it is subject to competing provider effective competition there.

14. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable systems serving the Communities on Attachment C have met the LEC test and are subject to effective competition.

²⁰ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) (“*Cable Reform Order*”).

²¹ See 47 C.F.R. § 76.905(g). See also Petition in CSR 8240-E at 29-30.

²² See Petition in CSR 8241-E at Exh. 13.

²³ See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-16.

²⁴ 47 U.S.C. § 543(l)(D) (“a local exchange carrier . . . offers video programming services”); *Coxcom, Inc.*, Memorandum Opinion & Order DA 10-570 at ¶¶ 11-14 (rel. March 31, 2010), available at 2010 WL 1243953.

²⁵ Petition in CSR 8239-E at 18 n.67 & Exh. 8B (Ascension Parish); *id.* at Exh. 8A (Baton Rouge/East Baton Rouge Parish).

²⁶ AOL Television, <http://television.aol.com/listings/la/gonzales> (visited May 27, 2010) (Gonzales); AOL Television, <http://television.aol.com/listings/la/livingston> (visited June 1, 2010) (Livingston); TV Listings for EATEL Video, <http://tvlistings.aol.com/listings/la/sorrento/eatel-video-digital-non-reb?hid=null&zipcode=70778&tab=grid> (visited May 27, 2010); LUS Fiber, Cable, Phone, Internet, <http://www.lusfiber.com> (visited May 27, 2010) (Lafayette City/Parish).

III. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Cox Communications Louisiana, LLC, d/b/a/ Cox Communications Greater Louisiana, **IS GRANTED**.

16. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

17. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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²⁷ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8077-E, 8239-E, 8240-E, 8241-E

COMMUNITIES SERVED BY COX COMMUNICATIONS LOUISIANA, LLC

Communities	CUID(s)	CPR*	Households	Estimated Competing Provider Subscribers
CSR 8077-E				
St. Charles Parish (E. Bank and Western)	LA0191 LA0320	22.03%	16422	3617
CSR 8239-E				
Baker	LA0160	15.43%	4971	767
Denham Springs	LA0161	19.02%	4420	841
Donaldsonville	LA0198	17.06%	2656	453
Gramercy	LA0185	18.30%	1438	263
Grosse Tete	LA0413	26.95%	326	88
Iberville Parish	LA0157 LA0400 LA0416 LA0547	20.03%	5538	1110
Livingston Parish	LA0162 LA0322	37.94%	25534	9689
Lutcher	LA0184	15.70%	1601	251
Plaquemines	LA0156	15.67%	2593	406
Port Allen	LA0196	21.72%	2012	437
Rosedale	LA0399	19.16%	442	85
Sorrento	LA0324	23.01%	446	103
St. Gabriel	LA0573	18.04%	1274	230
St. James Parish (5 th District)	LA0186	39.14%	806	315
Walker	LA0195	18.40%	2745	505
West Baton Rouge Parish	LA0364 LA0365 LA0417	22.64%	4099	928
White Castle	LA0397	18.67%	699	131
CSR 8240-E				
Abbeville	LA0046	25.18%	5936	1495
Broussard	LA0117	20.54%	3008	618
Carencro	LA0199	19.44%	2975	579
Delcambre	LA0222	18.72%	826	155
Duson	LA0244	31.03%	644	200
Erath	LA0200	32.18%	1127	370
Iberia Parish	LA0099	32.67%	11004	3595

Jeanerette	LA0119	25.54%	2923	747
Lafayette City/Parish	LA0033 LA0093 LA0367	15.21%	98703	15013 (includes some LUS subscribers)
Loreauville	LA0245	18.64%	461	86
Scott	LA0118	18.23%	2920	532
Vermillion Parish	LA0114 LA0428	34.10%	10953	3735
Youngsville	LA0243	24.79%	2432	603
CSR 8241-E				
Baldwin	LA0126	15.57%	777	121
St. Mary Parish	LA0004 LA0124 LA0125 LA0296 LA0297 LA0298 LA0299	27.48%	6970	1915

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B**CSRs 8239-E and 8240-E****COMMUNITIES SERVED BY COX COMMUNICATIONS LOUISIANA, LLC**

Communities	CUID(s)	Franchise Area Households	Cable Subscribers	Penetration Percentage
CSR 8239-E				
East Feliciana Parish	LA0558	4464	224	5.02%
CSR 8240-E				
Kaplan	LA0017	2069	477	23.05%

ATTACHMENT C

CSRs 8239-E and 8240-E

COMMUNITIES SERVED BY COX COMMUNICATIONS LOUISIANA, LLC

Communities	CUIDs
CSR 8239-E	
Ascension Parish	LA0146 LA0323 LA0436
Baton Rouge/ East Baton Rouge Parish	LA0055 LA0339 LA0441
Gonzales	LA0120
Livingston Parish	LA0162 LA0322
Sorrento	LA0324
CSR 8240-E	
Lafayette City/Parish	LA0033 LA0367 LA0093